



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



416993

NOV 07 2011

REPLY TO THE ATTENTION OF:

SE-5J

GENERAL NOTICE LETTER
URGENT LEGAL MATTER
CERTIFIED MAIL RETURN RECEIPT REQUESTED

Independent Waste Systems
P.O. Box 6218
Gary, Indiana 46406

Independent Waste Systems
1520 Blaine St.
Gary, Indiana 46406

Re: General Notice for the Gary Development Landfill Site in Gary, Indiana

CERLIS ID#: IND077005916

Dear Sir or Madam:

Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency (EPA) is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the Gary Development Landfill Site (the Site) located in Gary, Indiana. Based on information presently available to EPA, EPA has determined that Independent Waste Systems (IWS) may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, specifically Sections 106(a) and 107(a), Potentially Responsible Parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare or the environment. Under Section 107(a) of CERCLA, PRPs may be held liable for all costs EPA incurs in responding to any release or threatened release of hazardous substances at the Site, unless the PRP can show divisibility or any of the other statutory defenses. PRPs include current and former owners and operators of the Site, persons who arranged for treatment and/or disposal of any

hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that IWS may be liable under Section 107(a) of CERCLA with respect to the Gary Development Landfill Site a transporter, who by contract or agreement, accepted hazardous substances for transportation and disposal at, and selected the Site.

To date, EPA and the State of Indiana have taken several response actions at the Site under the authority of the Superfund Program. Below is a brief description of the actions taken at the Site.

- A Preliminary Assessment (“PA”) and Site Investigation (“SI”) in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site which was completed on October 9, 1991.
- Removal Actions to reduce immediate threat to the environment or human health posed by the Site were completed on September 27, 2002.
- An Expanded Site Inspection was completed on November 18, 2009.

Additional information about EPA’s activities related to the Site is available at:
<http://www.epa.gov/region5/cleanup/garyl landfill/index.html>

De Minimis Settlements

Under CERCLA § 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements “to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties.” Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a “premium” that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) contribution protection, which provides a settling party with protection from being sued by other responsible parties for the specific matters addressed in the settlement. Participation in a *de minimis* settlement means that IWS is settling directly with EPA as soon as it is possible to do so.

If IWS believes that it may be eligible for a *de minimis* settlement at this Site, please contact Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664.

Resources and Information for Small Businesses

As IWS may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. IWS may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidance regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

In addition, if IWS is a "service station dealer" who accepts used oil for recycling, it may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>. If IWS believes it may qualify for the exemption, please contact either Nicole Wood-Chi, Associate Regional Counsel (312) 886-0664 or David Linnear, Remedial Project Manager (312) 886-1841 to request an application/information request specifically designed for service station dealers.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. IWS may inquire about these resources at www.epa.gov. In addition, EPA's Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

Financial Concerns/Ability to Pay Settlements

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If IWS believes, and can document that it falls within that category, please contact Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664 for information on "Ability to Pay Settlements." In response, IWS will receive a package of information about the potential for such settlements and a form to fill out with information about the finances, and IWS will be asked to submit financial records including federal income tax returns. Also, please note that, because EPA has a potential claim against IWS, it must include EPA as a creditor if it files for bankruptcy.

Information to Assist IWS

EPA would like to encourage communication between IWS, other PRPs and EPA at the Site. EPA recommends that all PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA.

To assist IWS in its efforts to communicate, please find the following enclosed information:

1. A list of names and addresses of PRPs to whom this letter is being sent.
2. A fact sheet that describes the Site.

EPA has established an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record is located at Gary Public Library, 220 West 4th Avenue, Gary, Indiana, and it is available to IWS and the public for inspection and comment. The Administrative Record is also available for inspection and comment at the Superfund Records Center, on the Seventh Floor at EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

EPA invites IWS to participate in formal negotiations with EPA to reach settlement providing for the PRPs, including IWS, to conduct or finance the response activities required at the Site.

Send your response to this notice of potential liability to:

Fouad Dababneh, Enforcement Specialist
Environmental Protection Agency – Region 5
Superfund Division (SE-5J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Please give this matter immediate attention and consider consulting an attorney. If IWS has any questions regarding this letter, please contact Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664. Thank you for prompt attention to this matter.

Sincerely,



Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch

Enclosures

- A. List of PRPs
- B. Site Fact Sheet
- C. Small Business Regulatory Enforcement Fairness Act Fact Sheet

ENCLOSURE A

PRPs LIST

American Chemical Service Inc.
PO Box 190
420 South Colfax Avenue
Griffith, Indiana 46319

Independent Waste Systems
PO Box 6218
Gary, Indiana 46406

Independent Waste Systems
1520 Blaine Street
Gary, Indiana 46406

Industrial Disposal Company
a/k/a Industrial Disposal Corporation
1423 South Jackson Street
Louisville, Kentucky 40208

ENCLOSURE B

SITE FACT SHEET

Gary Development Landfill Site Gary, Indiana

The Gary Development Landfill Site is a former landfill that operated from approximately 1975 to 1989. It is located at 479 Cline Avenue in a primarily industrial neighborhood in Gary, Indiana. The landfill accepted hazardous waste including volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), asbestos, metals, and pesticides. Contaminants from the site have been detected in a wetland which is adjacent to the southeastern portion of the property. This wetland borders the Grand Calumet River. The State of Indiana has referred the Site to the EPA.

The landfill lacked a lining and other waste containment features, which allowed hazardous substances to contaminate an adjacent wetland that borders the Grand Calumet River. The area provides habitat for several state endangered species, including the Marsh Wren.

In 2002, EPA supervised the removal of numerous containers of oil, paint, insecticides and antifreeze from the site. The Indiana Department of Environmental Management conducted an expanded site inspection in 2007 providing data to take action under Superfund. After further investigation, a cleanup strategy will be developed.

The Gary Development Landfill Site has been added to the Superfund program National Priorities List. The National Priorities List is EPA's list of the most serious uncontrolled or abandoned hazardous waste sites identified for long-term cleanup. EPA will try to identify any local parties potentially responsible for the contamination. For sites without a viable responsible party, EPA investigates the full extent of the contamination before starting any significant cleanup. When a site is added to the NPL it is eligible for financial resources to fully characterize the extent of the contamination and develop a cleanup plan. EPA will investigate the full extent of the contamination before starting significant cleanup at the site.